

Message Text

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ACTION DLOS-04

INFO OCT-01 EA-07 IO-10 ISO-00 ACDA-05 AGR-05 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-01 OFA-01 COME-00

DODE-00 DOTE-00 EB-07 EPA-01 ERDA-05 FEAE-00 FMC-01

TRSE-00 H-02 INR-07 INT-05 JUSE-00 L-03 NSAE-00

NSC-05 NSF-01 OES-03 OMB-01 PA-01 PM-04 PRS-01 SP-02

SS-15 USIA-06 OIC-02 AF-06 ARA-06 EUR-12 NEA-10

(ISO) W

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P 110930Z SEP 75

FM AMEMBASSY TOKYO

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C O N F I D E N T I A L SECTION 1 OF 2 TOKYO 12779

E.O. 11652: GDS

TAGS: PLOS

SUBJ: LAW OF THE SEA: NEW YORK GROUP OF FIVE MEETING

THERE FOLLOWS GOJ PROPOSED AMENDMENTS TO COMMITTEE ONE NEGOTIATING
TEXT. FOREIGN MINISTRY NOTES THESE AMENDMENTS HAVE NOT YET RECEIVED
FINAL INTER-MINISTERIAL CLEARANCE. BEGIN TEXT:

1. DELETE

2. THE AUTHORITY MAY CARRY OUT ACTIVITIES IN THE AREA
OR ANY STAGE THEREOF EITHER BY ITSELF, OR THROUGH STATES
PARTIES TO THIS CONVENTION, OR STATE ENTERPRISES, OR
PERSONS NATURAL OR JURIDICAL WHICH POSSESS THE NATIONALITY
OF SUCH STATES OR ARE EFFECTIVELY CONTROLLED BY THEM OR THEIR
NATIONALS, OR ANY GROUP OF THE FOREGOING, BY ENTERING INTO
SERVICE CONTRACTS, OR JOINT VENTURES OR ANY OTHER SUCH FORM
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OF ASSOCIATION WHICH ENSURES DIRECT AND EFFECTIVE CONTROL
OF THE AUTHORITY AT ALL TIMES, PURSUANT TO THE BASIC
CONDITIONS ANNEXED TO THIS CHAPTER.

3. DELETE

4. DELETE

BASIC CONDITIONS

PARAGRAPH 3

3. (A) THE AUTHORITY SHALL ENCOURAGE THE CONDUCT OF GENERAL SURVEY OPERATIONS FOR THE RESOURCES IN THE AREA. GENERAL SURVEY MAY BE CARRIED OUT BY ANY ENTITY, WHICH MEETS THE ENVIRONMENTAL PROTECTION REGULATIONS OF THE AUTHORITY, BY NOTIFYING THE AUTHORITY.

(B) THE AUTHORITY SHALL, UPON THE PROPOSAL OF A STATE PARTY TO THIS CONVENTION OR ON ITS OWN INITIATIVE, OPEN FOR EVALUATION AND EXPLOITATION OF THE RESOURCES OF THE AREA THE SEA-BED AND OCEAN FLOOR OF OCEANIC AREAS DETERMINED BY IT ON THE BASIS OF SUFFICIENT SUPPORTING DATA, TO BE OF COMMERCIAL INTEREST. PROVIDED HOWEVER, THAT THE AUTHORITY MAY REFUSE TO OPEN ANY PART OR PARTS OF THE AREA PURSUANT TO THIS SUB-PARAGRAPH WHEN THE AVAILABLE DATA INDICATES THE RISK OF INOPARABLE HARM TO A UNIQUE ENVIRONMENT OR UNJUSTIFIABLE INTERFERENCE WITH OTHER USES OF THE AREA.

BASIC CONDITIONS

PARAGRAPH 5.

5. ON THE APPLICATION OF ANY STATE PARTY TO THIS CONVENTION, OR STATE INTERPRISE, OR PERSON NATURAL OR JURIDICAL WHICH POSSESSES THE NATIONALITY OF SUCH STATES OR IS EFFECTIVELY CONTROLLED BY IT OR ITS NATIONALS, OR ANY GROUP OF THE FOREGOING (HEREINAFTER CALLED THE "APPLICANT"), THE AUTHORITY SHALL ENTER INTO SUCH SERVICE CONTRACTS OR JOINT VENTURES OR ANY OTHER FORM OF ASSOCIATION AS THE APPLICANT MAY PROPOSE, FOR THE CONDUCT OF CONFIDENTIAL

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EVALUATION (INCLUDING SUCH STAGES AS FEASIBILITY STUDY, CONSTRUCTION OF EXPERIMENTAL FACILITY, OR PROCESSING OR TRANSPORTATION RELATED TO THE EVALUATION) AND OF EXPLOITATION OF THE RESOURCES IN THE AREA.

ARTICLE 26

1. THE ASSEMBLY SHALL BE THE PLENARY ORGAN OF THE AUTHORITY. IT MAY DISCUSS ANY QUESTIONS OR ANY MATTERS WITHIN THE SCOPE OF THIS CONVENTION OR RELATING TO THE POWERS AND FUNCTIONS OF ANY ORGANS PROVIDED FOR IN THIS CONVENTION AND MAY MAKE RECOMMENDATIONS TO THE COUNCIL ON ANY SUCH QUESTIONS OR MATTERS. (NO HOPE OF INCORPORATING "THE

ASSEMBLY SHALL TAKE NO ACTION IN RESPECT OF POWERS GRANTED TO THE COUNCIL.")

2. IN ADDITION, THE POWERS AND FUNCTIONS OF THE ASSEMBLY SHALL BE:

(III) "SUBSIDIARY ORGANS" BE AMENDED AS "ADVISORY ORGANS"

(IV), IN ACCORDANCE WITH THE GENERAL ASSESSMENT SCALE USED BY THE UNITED NATIONS UNTIL THE AUTHORITY SHALL HAVE SUFFICIENT INCOME FOR MEETING ITS ADMINISTRATIVE EXPENSES;

3. THE POWERS AND FUNCTIONS OF THE AUTHORITY NOT SPECIFICALLY ENTRUSTED TO OTHER ORGANS OF THE AUTHORITY SHALL BE VESTED IN THE ASSEMBLY UPON THE DECISION OF THE COUNCIL.

THE COUNCIL
ARTICLE 27

1. THE COUNCIL SHALL CONSIST OF 36 C P AND SHALL MEET IN CONTINUOUS SESSION.

2. THE COUNCIL SHALL BE COMPOSED AS FOLLOWS:

(A) THE OUTGOING COUNCIL (OR IN THE CASE OF THE FIRST COUNCIL, THE CONFERENCE ON THE LAW OF THE SEA) SHALL DESIGNATE FOR MEMBERSHIP ON THE COUNCIL:

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(I) SIX MEMBERS FROM AMONG THE DEVELOPED COUNTRIES WITH SUBSTANTIAL INVESTMENT IN, OR POSSESSING ADVANCED TECHNOLOGY WHICH IS BEING USED FOR, THE EXPLORATION OF THE AREA AND THE EXPLOITATION OF ITS RESOURCES, PROVIDED THAT THEY ARE MAJOR IMPORTERS OF LANDBASED MINERALS WHICH ARE ALSO PRODUCED FROM THE RESOURCES OF THE AREA;

(II) THREE MEMBERS WHICH ARE MOST INDUSTRIALIZED AND WHICH HAVE THE HIGHEST GROSS NATIONAL PRODUCT, PROVIDED THAT THEY DO NOT FALL WITHIN CATEGORY (I);

(III) NINE MEMBERS FROM AMONG THE DEVELOPING COUNTRIES AS FOLLOWS;

(1) THREE MEMBERS WHICH ARE PRINCIPAL CONSUMERS OF LANDBASED MINERALS WHICH MAY ALSO BE PRODUCED FROM THE RESOURCES OF THE AREA;

(2) THREE MEMBERS WHICH ARE PRINCIPAL EXPORTERS OF THE MINERALS REFERRED TO IN SUB-PARAGRAPH (1) ABOVE;

(3) ONE MEMBER WITH THE LARGEST POPULATION PROVIDED

THAT IT DOES NOT FALL WITHIN CATEGORY (1) AND (2) ABOVE;

(IV) ONE MEMBER WHICH IS LAND-LOCKED AND LEAST-DEVELOPED,

(V) ONE MEMBER WHICH IS GEOGRAPHICALLY DISADVANTAGED AND LEAST-DEVELOPED.

(B) THE ASSEMBLY SHALL ELECT TO MEMBERSHIP ON THE COUNCIL EIGHTEEN COUNTRIES IN ACCORDANCE WITH THE PRINCIPLE OF EQUITABLE GEOGRAPHIC REPRESENTATION. UNTIL THE ASSEMBLY DECIDES OTHERWISE, ON A RECOMMENDATION OF THE COUNCIL, THE ELECTED SEATS ON THE COUNCIL SHALL BE DISTRIBUTED AS FOLLOWS: AFRICA-5, ASIA-5, LATIN-AMERICA-3, WESTERN EUROPE AND OTHERS-3, EASTERN EUROPE-2.

3. THE DESIGNATION PROVIDED FOR THIS ARTICLE SHALL TAKE PLACE NOT LESS THAN 60 DAYS BEFORE EACH REGULAR SESSION OF THE ASSEMBLY. THE ELECTIONS PROVIDED FOR IN THIS ARTICLE SHALL TAKE PLACE AT REGULAR SESSIONS OF THE ASSEMBLY.

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4. (A) DESIGNATED MEMBERS OF THE COUNCIL SHALL HOLD OFFICE FROM THE END OF THE NEXT REGULAR SESSION OF THE ASSEMBLY AFTER THEIR DESIGNATION UNTIL THE END OF THE FOLLOWING REGULAR SESSION OF THE ASSEMBLY.

(B) ELECTED MEMBERS OF THE COUNCIL SHALL HOLD OFFICE FROM THE END OF THE NEXT REGULAR SESSION OF THE ASSEMBLY AT WHICH THEY ARE ELECTED UNTIL THE END OF THE SECOND REGULAR SESSION OF THE ASSEMBLY THEREAFTER. IN THE ELECTION OF MEMBERS FOR THE FIRST COUNCIL, HOWEVER, NINE SHALL BE CHOSEN FOR A TERM OF ONE YEAR.

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INR-07 INT-05 IO-10 JUSE-00 L-03 NSAE-00 NSC-05

NSF-01 OES-03 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15

USIA-06 EA-07 OIC-02 AF-06 ARA-06 EUR-12 NEA-10

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5. MEMBERS SHALL BE ELIGIBLE FOR RE-ELECTION; BUT DUE REGARD SHOULD, AS A RULE, BE PAID TO THE DESIRABILITY OF ROTATING SEATS.

6. EACH MEMBER OF THE COUNCIL SHALL HAVE ONE VOTE. DECISIONS OF THE COUNCIL SHALL BE TAKEN BY A THREE-FOURTHS MAJORITY OF THE MEMBERS PRESENT AND VOTING, PROVIDED THAT SUCH MAJORITY SHALL INCLUDE AT LEAST A MAJORITY OF ALL MEMBERS OF THE COUNCIL TWO THIRDS OF ALL MEMBERS OF THE COUNCIL SHALL CONSTITUTE A QUORUM.

7. THE COUNCIL SHALL MEET AT SUCH TIMES AS IT MAY DETERMINE. THE MEETINGS SHALL TAKE PLACE AT THE SEAT OF THE AUTHORITY UNLESS OTHERWISE DETERMINED BY THE COUNCIL.

8. (PARAGRAPH 7 OF THE SINGLE TEXT)

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POWERS AND FUNCTIONS OF THE COUNCIL

ARTICLE 28

DELETE "IN EXERCISING SUCH POWERS.... BY THE ASSEMBLY."
IN THE SECOND SENTENCE.

(X-1) ENTER INTO CONTRACTS WITH STATE PARTIES, STATE ENTERPRISES OR PERSONS, NATURAL OR JURIDICAL, WHICH POSSESS THE NATIONALITY OF CONTRACTING STATES OR ARE EFFECTIVELY CONTROLLED BY THEM OR BY THEIR NATIONALS ANY GROUP OF THE FOREGOING, AND IS SPONSORED BY A STATE PARTY OR FOR THE CONDUCT OF ACTIVITIES IN THE AREA PURSUANT TO THE BASIC CONDITIONS ANNEXED TO THIS CHAPTER, AND TO EXERCISE EFFECTIVE SUPERVISION AND CONTROL OVER SUCH ACTIVITIES ON BEHALF OF THE AUTHORITY, IN ACCORDANCE WITH THIS CHAPTER;

(X-2) DIRECT POLICY AND SUPERVISE ACTIVITIES OF THE ENTERPRISE AND APPROVE THE BUDGET, PROJECT AND AGREEMENT OF THE ENTERPRISE;

(XI) DELETE

XII) ADOPT, ON THE RECOMMENDATION OF THE TECHNICAL COMMISSION, RULES, REGULATIONS AND PROCEDURES AND ANY AMENDMENTS THERETO, PROVIDED THAT RULES, REGULATIONS AND PROCEDURES SHALL BE RESTRICTED TO THOSE SUBJECT MATTERS SPECIFICALLY PROVIDED FOR IN THE BASIC CONDITIONS ANNEXED TO THIS CHAPTER.

(XVI) ADD AT THE END "SUBJECT TO THE APPROVAL OF THE TRIBUNAL."

(XVII) INITIATE PROCEEDINGS IN THE TRIBUNAL AFTER RECEIVING NOTIFICATION FROM THE SECRETARY-GENERAL ON ANY CASES OF FAILRUE TO COMPLY WITH THE PROVISIONS OF THE PRESENT CHAPTER, CONFIDENTIAL

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THE RULES, REGULATIONS AND PROCEDURES PRESCRIBED THEREUNDER AND THE TERMS AND CONDITIONS OF A CONTRACT AND PRESENT EVIDENCE THEREON TO THE TRIBUNAL FOR TIS DECISION.

ORGANS OF THE COUNCIL

ARTICLE 29

8. DECISIONS SHALL BE MADE BY A THREE POINTS MAJORITY OF MEMBERS OF THE COMMISSION PRESENT AND VOTING, PROVIDED THAT SUCH MAJORITY SHALL INCLUDE AT LEAST A MAJORITY OF ALL MEMBERS OF THE COMMISSION. TWO-THIRDS OF ALL MEMBERS OF THE COMMISSION SHALL CONSTITUTE A QUORUM.

9. THE COMMISSION SHALL MEET AT SUCH TIMES AS IT MAY DETERMINE. THE MEETINGS SHALL TAKE PLACE AT THE SEAT OF THE AUTHORITY UNLESS OTHERWISE DETERMINED BY THE COMMISSION.

THE ECONOMIC PLANNING COMMISSION

ARTICLE 30

1. MEMBERS OF THE ECONOMIC PLANNING COMMISSION SHALL HAVE APPROPRIATE QUALIFICATIONS AND EXPERIENCE RELEVANT TO THE MANAGEMENT OF MINERAL RESOURCES, MINING AND (PROCESSING) MINERAL TECHNOLOGY AND PRACTICES, AND INTERNATIONAL TRADE AND FINANCE.

2. THE ECONOMIC PLANNING COMMISSION, IN CONSULTATION WITH THE COMPETENT ORGANS OF THE UNITED NATIONS AND THE SPECIALIZED AGENCIES, SHALL REVIEW THE TRANDS OF, AND FACTORS AFFECTING, SUPPLY, DEMAND AND PRICES OF RAW MATERIALS

(BEGIN UNDERLINE) DERIVED FROM ALL SOURCES
OF THE RAW MATERIALS CONTAINED IN MINERALS BEING EXPLOITED
IN THE AREA AND RECOMMEND MEASURES TO THE COUNCIL TO
MINIMIZE ADVERSE EFFECTS ON DEVELOPING COUNTRY LAND-BASED
PRODUCERS IN THE CONTEXT OF GLOBAL COMMODITY ARRANGEMENTS.
(END UNDERLINE)

3. THE COMMISSION SHALL ADVISE THE COUNCIL IN THE EXERCISES
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OF ITS (ECONOMIC PLANING) FUNCTIONS AND MAKE SUCH SPECIAL
STUDIES AND REPORTS ON THESE FUNCTIONS AS MAY BE REQUIRED BY
THE COUNCIL FROM TIME TO TIME. (BEGIN UNDERLINE) IN PARTICULAR, IT
SHALL ADVISE THE COUNCIL ON THE NEED OF EACH STATE PARTY FOR THE
IMPORTS OF MINERALS DERIVED FROM THE RESOURCES OF THE AREA.
(END UNDERLINE)

4. ANY PARTY TO THE RESENT CONVENTION WHO ECONOMY SUB-

STANTIALLY DEPENDS ON THE EXPORT OF MINERALS AND OTHER PRODUCTS
ORIGINATING IN ITS TERRITORY WHICH ARE ALSO DERIVED FROM
MINERALS UNDER EXPLOITATION IN THE AREA MAY BRING TO THE
ATTENTION OF THE ECONOMIC PLANNING COMMISSION A SITUATION
WHICH (BEGIN UNDERLINE) BASED ON SUBSTANTIAL EVIDENCE WILL (END
UNDERLINE) (IS LIKELY TO) LEAD TO A SUBSTANTIAL
DECLINE IN ITS MINERAL EXPORT EARNINGS. THE COMMISSION
SHALL FORTHWITH INVESTIGATE THIS SITUATION AND
SHALL MAKE RECOMMENDATIONS, IN CONSULTATION WITH PARTIES TO
THE PRESENT (CONVENTION) (NEXT WORD UNDERLINED) CHAPTER AND WITH
THE COMPETENT INTER-GOVERNMENTAL ORGANIZATION TO THE COUNCIL IN

ACCORDANCE WITH PARAGRAPH 2 OF THIS ARTICLE.

5. (BEGIN UNDERLINE) IN NO EVENT SHALL THE COMMISSION MAKE
ANY RECOMMENDATION OR TAKE ANY ACTION CONCERNING CONTRACTS
IN FORCE AT THE TIME OF ITS CONSIDERATION. (END UNDERLINE)

TECHNICAL COMMISSION
ARTICLE 31

2. DELETE SUB-PARAGRAPHS (VI) AND (VII).

THE ENTERPRISE
ARTICLE 35

1. ADD AT THE END OF THE SECOND SENTENCE "TO EMPLOY
UNDER ITS MANAGEMENT THE PERSONNEL, EQUIPMENT AND SERVICES
FOR ITS OPERATIONS TO THE EXTENT THAT THE ENTERPRISE DOES
NOT CURRENTLY POSSESS THEM. THE TERMS AND CONDITIONS

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OF THEIR EMPLOYMENT SHOULD BE IN ACCORDANCE WITH THE
RELEVANT BASIC CONDITIONS. SUCH AGREEMENTS WILL ENTER
INTO FORCE UPON THE APPROVAL OF THE COUNCIL."

2. DELETE IN THE THIRD SENTENCE "ON THE BASIS OF EQUAL
REPRESENTATION OF ALL GEOGRAPHICAL REGIONS ENUMERATED IN
ARTICLE 27 (1) (C) AND"

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Message Attributes

Automatic Decaptioning: X
Capture Date: 26 AUG 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LAW OF THE SEA, TEXT, AMENDMENTS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 11 SEP 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: greeneet
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975TOKYO12779
Document Source: ADS
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: 11652 GDS
Errors: n/a
Film Number: D750314-1232
From: TOKYO
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t197509106/baaaafzr.tel
Line Count: 390
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Office: ACTION DLOS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 8
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: greeneet
Review Comment: n/a
Review Content Flags:
Review Date: 01 JUL 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <01 JUL 2003 by BoyleJA>; APPROVED <10 NOV 2003 by greeneet>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: n/a
TAGS: PLOS, JA
To: STATE
USUN N Y
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006